HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 503 of 2001

(Old No. 213 of 1998)

Suresh Chandra Sharma ..... Petitioner

Versus

Chandra Prakash Bhatt & another ..... Respondents

Sri V.B.S. Negi, Advocate for the revisionist
Sri Rajendra Kotiyal for the respondents.

Dated: 16.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

Present revision has been filed against the judgment and order dated 31.3.1998 passed by the Judge, Small Cause Court, Pauri Garhwal, in S.C.C. Case No. 9 of 1993, thereby decreeing the suit for the eviction of the defendant from the shop in dispute and for recovery for rent of arrears of rent for Rs.10,200/- and damages at the rate of Rs.600/- per month .

Briefly stated that facts giving rise to the present revision are that respondent plaintiff filed a suit before the Judge Small Cause Court, Pauri Garhwal for the eviction of the revisionists from the shop in dispute situated at village Sitabpur, District Pauri Garhwal and for recovery of arrears of rent and damages. The plaintiff has submitted that the shop in question was given to the defendants on a monthly rent of Rs.600/-. The defendants have failed to pay the rent from 1st April 1992. The plaintiff served a notice on the defendants. A sum of Rs.9,000/-

has been claimed from the defendants as arrears of rent and further sum of Rs.1,000/- has been claimed towards the damages for the months of July and August 1993.

During the pendency of the present revision, the revisionist has filed an application that shop was locked since 15.12.1994 by the Advocate Commissioner and he submitted his report on 15.12.1994. on 23.2.1999, the items lying in the shop were also auctioned without giving any notice to the revisionist and the District Judge had directed the revisionist to pay rent subsequently to the date when the shop was locked vide order dated 28.7.2004.

Applicant has submitted that he is not in possession of the tenanted premises and according to the revisionists they have left possession of the disputed shop on 15.12.1994. In view of the above, I find no infirmity in the order passed by the district Judge.

However, the revisionist has raised the dispute with regard to the liability of payment of rent, on the basis of the order passed by the Executing Court. It is clarified that any order passed by the executing court may be challenged by the petitioner in the appropriate proceedings. Present revision has been directed against the order dated 31.3.1998, passed by the Court below challenging the execution order.

The learned Judge, Small Cause Court has decreed the suit for recovery of possession, arrears of rent and damages. I find no illegality or infirmity in the order passed by the trial Court. The revision lacks merit and is hereby dismissed.

No order as to costs.

(Rajesh Tandon J.)

16.8.2004